* THE HON'BLE SRI JUSTICE G.BIKSHAPATHY

AND

* THE HON'BLE SRI JUSTICE P.S NARAYANA

+W.P.No.1029 of 2005

% 07/03/2005

#The Commissioner, Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.

.. Petitioner

Vs.

$ 1. Sri Iqbal Ahmed, S/o. Late M.A.Akhtar, Assistant City Planner, Circle III, Municipal Corporation of Hyderabad, R/o. Hyderabad.

2. The State of Andhra Pradesh represented by its Secretary to Government, Municipal Administration and Urban Development Department, Secretariat, Hyderabad.

Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Mr.A.V.Sesha Sai

^ Counsel for respondent No.1: Mr.T.Suryakaran Reddy

Counsel for Respondent No.2: Government Pleader for Services-I

?CASES REFERRED :

1. 1998(4) SCC 154.
2. 2004(6) ALD (NOC) 381.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1029 of 2005

Between:

The Commissioner, Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.

..... PETITIONER

AND

1 Sri Iqbal Ahmad, S/o. Late M.A. Akhtar, Assistant City Planner, Circle III, Municipal Corporation Of Hyderabad, R/o. Hyderabad.
2 The State of Andhra Pradesh, represented by its Secretary to Government, Municipal Administration and Urban Development Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ, order or direction calling for the Records pertaining to the order dated 24-9-2004 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.No. 2779 of 2003 and quash the same.

Standing Counsel for the Petitioner: MR.A.V.SESHA SAI

Counsel for the Respondent No.1: MR. T.SURYAKARAN REDDY

Counsel for Respondent No.2: GP FOR SERVICES I

The Court made the following:

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ORAL ORDER: (per PSN.J.)

The Commissioner, Municipal Corporation of Hyderabad, filed the present Writ Petition praying for the issuance of a Writ of Certiorari or any other appropriate writ, order or direction calling for the records pertaining to the order dated 24.9.2004 passed by A.P. Administrative Tribunal, Hyderabad (hereinafter referred to as the Tribunal) in O.A.No.2779 of 2003 and quash the same and pass such other suitable orders.

2. It is stated that the 1st respondent-applicant in the OA was placed under suspension by the Government of Andhra Pradesh by virtue of G.O.Ms.No.530, Municipal Administration, dated 1.9.1989 pending enquiry into the allegations of

issuing sanction plan and contravention of Building Regulations when he was working as Town Planning Supervisor in Circle No.3 of Municipal Corporation of Hyderabad. It is stated that by virtue of G.O.Ms.No.530, dated 11.9.1989, 2nd respondent herein while deciding to initiate disciplinary proceedings, appointed Sri H.S.Brahma, I.A.S., the then Commissioner of Municipal Corporation of Hyderabad as Enquiry Officer, but, however, the enquiry could not be completed due to certain administrative reasons and subsequent thereto Sri H.S.Brahma was transferred, and the 2nd respondent herein appointed Chief City Planner of Municipal Corporation of Hyderabad as Enquiry Officer. It is further stated that since the cause of action for initiation of disciplinary action arose prior to the year 1989, action was initiated as per the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963, (for short the Rules) and the 1st respondent-applicant was placed under suspension by the 2nd respondent by virtue of G.O.Ms.No.530, dated 11.9.1989 under Rule 13 of the aforesaid Rules. It is further stated that the 1st respondent-applicant earlier filed R.P.No.25971 of 1989 before the Tribunal questioning G.O.Ms.No.530, dated 11.9.1979 and the Tribunal initially suspended the said order on 3.10.1989 and subsequently the same was extended until further orders on 12.10.1989. The said R.P. was disposed of on 18.7.1995 with certain directions. Subsequent thereto, as per the guidelines issued by the Government of Andhra Pradesh in G.O.Ms.No.257, General Administration (Services-C) Department, dated 10.6.1999, the case of the 1st respondent-applicant for *ad hoc* promotion was considered to the category of Assistant City Planner and by virtue of G.O.Ms.No.506, Municipal Administration, dated 10.10.2001, the 1st respondent was promoted as Assistant City Planner subject to the outcome of enquiry, which was initiated by the Government of Andhra Pradesh vide Government Memo No.6704/F1/2001-2 M.A., dated 10.10.2001. In terms of the said order, the 1st respondent submitted joining report on 11.10.2001 as Assistant City Planner and he was permitted to join as Assistant Town Planner vide proceedings No.709/OP/OP.II/MCH/2001, dated 19.10.2001. It was stated that by proceedings dated 9.6.2003 the Chief City Planner was requested to complete the enquiry as quickly as possibly and similar request was once again made vide U.O.Note No.709/OP/OP4/MCH/2002/673, dated 11.6.2003. It is also stated that a request was made to furnish the connected file within two days for verification and to submit inquiry report to the Government and that the said record was not furnished by the Assistant City Planner, Circle-3, and

due to which the enquiry was still pending. Subsequent thereto, by proceedings dated 10.7.2003, the Assistant City Planner, Circle-3, Municipal Corporation of Hyderabad, informed the Chief City Planner and the Enquiry Officer, that the records called for were searched in the Record Section and the building file and UC file were not traceable. Enclosing the said letter dated 10.7.2003, the Chief City Planner and the Enquiry Officer informed that unless the records are perused, it would not be possible to submit the enquiry report to Government. It is also stated that by proceedings dated 6.9.2003 of the Additional Commissioner (Administration), Municipal Corporation of Hyderabad, the Chief City Planner was requested to fix up the responsibility on the concerned for misplacing the file and several other facts thereto had been narrated in detail in page 7 of the affidavit filed in support of the Writ Petition. The further details relating to the reasons for the delay in conducting the enquiry had been furnished in paras 8 and 9 of the affidavit filed in support of the Writ Petition.

3. The applicant-1st respondent herein questioned the disciplinary proceedings initiated against him in G.O.Ms.No.531, dated 11.9.1989 while suspending the applicant and appointing an Enquiry Officer and for not conducting any enquiry for the last 14 years as illegal, arbitrary and unconstitutional, being violative of Articles 14, 16 and 21 of the Constitution of India and for certain other suitable reliefs, on the file of the Tribunal, and the Tribunal ultimately, after taking into consideration all the facts and circumstances, allowed the O.A. and aggrieved by the same the Commissioner of Municipal Corporation of Hyderabad had questioned the said order in the present Writ Petition.

4. Sri A.V.Sesha Sai, learned Standing Counsel for the Writ Petitioner would submit that the ground on which the relief was granted to the 1st respondent-applicant cannot be sustained since by virtue of the delay no prejudice had been caused to the 1st respondent-applicant. The learned counsel also had drawn the attention of this Court to the facts of the decision which had been relied upon by the Tribunal in STATE OF ANDHRA PRADESH vs. N.RADHAKISHAN[1] and made an attempt to distinguish the present case on facts. The learned counsel also would submit that though the 2nd respondent-Government is the competent authority in relation to the conduct of the enquiry inasmuch as all the other benefits may have to be settled by the writ petitioner, the writ petitioner also would be an aggrieved party, though the

2nd respondent herein had not questioned the impugned order. The learned counsel also had drawn the attention of this Court to yet another decision of a Division Bench of this Court in UNION OF INDIA vs. A.S.RAMACHANDRAN[2] and would contend that no hard and fast rule can be laid down that whenever there is delay in conduct of the enquiry in relation to the disciplinary proceedings, automatically such employee is entitled to the benefit.

5. Per contra, Sri T.Suryakaran Reddy, learned counsel representing the 1st respondent-applicant had taken this Court through the findings recorded by the Tribunal and would submit that though more than 14 years had elapsed from the date of adjudication, the concerned authorities had not made up their mind even atleast to issue the charge memo though there was no stay of enquiry as such at any point of time in the prior proceedings. The counsel also would submit that there was no embargo placed on the part of the 2nd respondent to further proceed with the enquiry in accordance with law, but for the reasons best known the same had not been proceeded with and this inordinate delay in initiating and proceeding with the enquiry definitely had caused prejudice to the 1st respondent-applicant. The learned counsel also had brought to the notice of this Court that the 1st respondent-applicant is due to retire from service at an early date and at this point of time if any adverse order is passed, it would come in his way, claiming the retiral benefits incidental to his service. The counsel also would maintain that at any rate the 2nd respondent-Government alone can be said to be the aggrieved party, but definitely not the Municipal Corporation of Hyderabad, which had questioned the action by filing the present Writ Petition.

6. Heard the counsel on record and perused the impugned order and other material placed before us.

7. The Tribunal had made the order in O.A.No.2779 of 2003, by virtue of which a relief had been granted to the 1st respondent-applicant, which had been called in question in the present Writ Petition. In fact the Tribunal, after placing reliance on the ratio laid down in STATE OF ANDHRA PRADESH case (1 supra), had further specifically observed as follows:

> "Having regard to the facts and circumstances obtaining in this case, this is a classic case of lethargic attitude of the respondents. The respondents, having initiated disciplinary proceedings, way back on 11.9.1989, ought to have conducted the enquiry, within a reasonable period. It is seen that, the erstwhile Tribunal, while admitting the matter pertaining to suspension, did not stay the disciplinary proceedings. Nothing prevented the authorities, to complete the enquiry, at the earliest. Further, atleast the authorities could have woke up from their deep slumber after disposal of the R.P.25971/89 on 18.7.1995, wherein the erstwhile Tribunal, categorically directed the respondents as "to ensure that the final orders be passed, in pursuance of the enquiry, if not already passed, within 2 months from the date of receipt of copy of that judgment". The respondents did not move an inch in the matter. When the applicant himself requested the authorities to consider his claim for promotion on adhoc basis as per the guidelines issued in G.O.Ms.No.257, dated 10.6.1999, the respondents considered his case and at the same time, they have appointed the Chief City Planner as an Enquiry Officer, vide memo dated 10.10.2001. Nearly 3 years have gone by, but no charge memo has been issued. Therefore, unhesitatingly, it can be held that the action of the respondents is arbitrary. Whenever an officer is found to be guilty of misconduct, the initiation of disciplinary proceedings by framing the charges should be done as quickly as possible, the reason being that the evidence may disappear on account of delay and either the disciplinary proceedings or the charged officer may be in a disadvantageous position because of the delay by taking into the totality of circumstances into consideration and the nature of allegations leveled against the applicant. As, more than 14 years have gone by, since the date of allegation and the authorities are yet to make up their mind, to issue the charge memo, the enquiry stands vitiated".

Apart from these observations made by the Tribunal, all the other facts and circumstances also had been taken into consideration.

8. It is not in controversy that the charges pertain to the year 1989, which is of more than 14 years as on the date of the 1st respondent-applicant questioning the same by filing OA before the Tribunal. In the Judgment cited supra (1) the Apex Court while dealing with the issue 'delay in conducting of the disciplinary proceedings' had observed as follows:

> "It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on

the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations".

9. In Union of India case (2 supra) the Division Bench of this Court while deciding Writ Petition No.10760 of 2004, dated 29.7.2004, observed as follows:

"It is not possible to draw any hard and fast rule to say that wherever the time stipulated by judicial body to expeditiously conclude the disciplinary enquiry is not adhered to, it must automatically be held that the continuation of the enquiry is illegal, nor it is the conclusion of the Supreme Court that wherever there is a long delay in the disciplinary proceedings, that prolonged continuation of the disciplinary proceedings defeats justice, and therefore, they must be held to be invalid. The Court held that various factors are required to be taken into consideration to come to the conclusion that such long pendency of the disciplinary proceedings would defeat the ends of justice insofar as the employee is concerned. One of the relevant factors as can be seen from the above extract is the stage, at which these proceedings were pending on the date of the adjudication.

The Supreme Court in the case of State of Punjab and others v. Chaman Lal Goyal, 1995(2) SCC 570, held that though the proceedings were pending for a long time, having regard to the fact that the enquiry has proceeded to a large extent, it may not be in the

> interest of the administration to declare at that stage that the pendency would result in defeat of justice. Ultimately, it all depends on the nature of the investigation that is required to be conducted which determines the appropriateness of the duration of the disciplinary proceedings. Apart from that, in a matter like the present case, even after the conclusion of the enquiry, if a body like Union Public Service Commission or some other body is required to be consulted before taking a final decision, such a process itself would take sometime. These are all the relevant factors (though not exhaustive), which are required to be taken into consideration while dealing with the question like the one before us".

10. There cannot be any serious dispute or controversy to this proposition to the effect that no general rule as such can be laid down and necessarily when there is a delay in conduct of finalisation of the disciplinary proceedings, the employee would be entitled to the benefit of the said proceedings being vitiated. But, however, in the present case, on facts, it is clear that there was no stay of enquiry at any point of time and nothing prevented 2nd respondent right from the year 1989 to further proceed with the enquiry and to finalise the enquiry. Certain proceedings had been placed before this Court to point out that the delay was due to some reasons but the said reasons are internal correspondence. Even otherwise, it is pertinent to note that though 14 years had gone by the date the 1st respondent-applicant had questioned the action from the date of allegation, the authorities had not made up their mind at all atleast to issue a charge sheet. The Tribunal also had taken this aspect into consideration. In the earlier Writ Petition, a specific direction was given to complete the enquiry within a period of two months way back in the year 1995 itself, but, however, the said directions had also not been complied with. The question who is an aggrieved party in the light of the facts and circumstances need not be specifically adverted to in the present context.

11. For the foregoing reasons and also in the light of the facts of the case and also the convincing reasons recorded by the Tribunal, this Court is of the considered opinion that the findings recorded by the Tribunal are in accordance with law and deserve no disturbance and therefore the same are hereby confirmed. We find no merits in the Writ Petition.

12. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

(G.BIKSHAPATHY, J.)

7th March, 2005.

SSR (P.S.NARAYANA, J.)

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..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice G.Bikshapathy (for His Lordship's kind perusal)

One Fair copy to the Hon'ble Sri Justice P.S.Narayana (for His Lordship's kind perusal)

To

1 The Commissioner, Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.

2 The Secretary to Government, Municipal Administration and Urban Development Department, State of Andhra Pradesh, Secretariat, Hyderabad.

3 The Registrar, A.P. Administrative Tribunal, Hyderabad.

4 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

5 1 CC to MR.SURYA KARAN REDDY

6 1 CC to MR.SESHA SAI

7 2 CD copies

8 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

9 The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.

10 8 LR copies.

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